

July 15, 1998

INDIVIDUAL RULES OF JUDGE DAVID N. EDELSTEIN

Unless otherwise ordered by Judge David N. Edelstein, matters before Judge David N. Edelstein shall be conducted in accordance with the following practices:

1. Communications With Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court.

B. Telephone Calls. Except as provided in Paragraph 1(D) below, telephone calls to chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call chambers at (212) 805-6195.

C. Faxes. Faxes to chambers are permitted only upon receiving express permission from the Court. If the Court's permission is obtained, copies must be simultaneously faxed or delivered to all counsel.

D. Docketing, Scheduling and Calendar Matters. For docketing, scheduling, and calendar matters, call chambers at (212) 805-6195 between 9:00 a.m. and 5:00 p.m.

E. Requests for Adjournments or Extensions of Time. Under no circumstances will an adjournment or extension of time be granted unless good cause is shown. The preferred form of a request for an adjournment or extension of time is a stipulation entered into by all parties to be "so ordered," *if granted*. All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order (reflecting only business days) must be attached. All requests, absent an emergency, shall be made 48 hours prior to the deadline for which the extension is sought, or the date of the scheduled appearance. In addition, an application to extend a discovery cutoff date must state precisely what discovery must still be done and, as precisely as possible, on what dates it will be accomplished, and on what date the joint proposed pretrial order will be submitted.

2. Motions

A. Pre-Motion Conferences in Civil Cases. A pre-motion conference with the Court is required before making any motion, except motions to reargue, emergency motions,

motions to compel arbitration, and motions to modify arbitration awards. The Court will not hear a motion, other than the exceptions noted, filed without a pre-motion conference, unless special permission is given. In the case of emergency motions, the moving party must set forth in detail the reasons for the claimed emergency. Emergency motions will only be considered where good cause is shown. To arrange a pre-motion conference, the moving party shall submit a letter not to exceed three pages in length setting forth the basis for the anticipated motion.

B. Courtesy Copies. Courtesy copies of all motion papers, marked as such, should be submitted for chambers. The Court requires two courtesy copies of all submissions in support of a motion for an order to show cause.

C. Memoranda of Law. Unless prior permission has been granted, memorandum of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

D. Filing of Motion Papers. Papers should be filed on or before the date of service. Unless special permission is granted by the Court for good cause shown, papers filed after 5:00 p.m. on the final day papers are due shall not be considered. Courtesy copies of all papers (except discovery requests and responses) should be delivered to chambers on the date of filing. Provided adequate notice is given under the Fed.R.Civ.P. and the Local Rules, all motions shall be returnable on Wednesdays at 10:30 a.m.

E. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

F. Form. All motions must be initiated by a notice of motion. The notice of motion must specify the rule or statute on which it is based, or, if it is not based on any specific rule or statute, then the notice must state that fact. Motions must comply strictly with the Fed. R. Civ. P. and the Local Rules. Additionally, no motion of the type described in Local Rule 6.1 shall be heard unless counsel for the moving party files with the Court at or prior to the argument an affidavit certifying that said counsel has conferred with counsel for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion without the intervention of the Court and has been unable to reach such an agreement. If part of the issues raised by motion have been resolved by agreement, the affidavit shall specify the issues so resolved and the issues remaining unresolved.

G. Replies. If a reply brief is submitted, it must be served on the opposing parties and filed with the Court on or before the time the motion is returnable. To submit reply papers after that time, a party must apply for an extension, see Rule 1(E) supra. Each topic of law covered in the reply brief must be prefaced with a brief statement explaining why the issue was not adequately discussed in the moving papers.

H. Orders to Show Cause. In addition to the usual requirements for orders to show cause, see especially Local Rule 6.1(d), applications for orders to show cause must be accompanied by a declaration in support of the order to show cause and a memorandum of law. The Court requires two copies of all submissions and copies of all decisions cited by counsel in their memorandum of law. Furthermore, in the first paragraph of their declaration in support of the order to show cause, applicants must : (1) state the earliest time that the injury could have been discovered and explain any delay in applying; (2) explain specifically what irreparable injury is claimed will occur between the application and the time when a notice of motion could be returnable; and (3) attempt to notify opposing counsel of the impending application and state the efforts made in that regard. Orders to show cause will only be considered in the case of a bona fide emergency, and only where good cause is shown.

I. Pro Hac Vice Admissions. A formal submission is required. The party seeking admission must submit to the Court and opposing counsel: (1) an affidavit of local counsel; (2) an affidavit of counsel to be admitted stating counsel's familiarity with the Fed. R. Civ. P., the Local Rules, and this Court's Individual Rules; (3) certificates of good standing from each jurisdiction in which the applicant is admitted; (4) a memorandum of law in support of counsel's motion; and (5) a proposed order.

J. Decisions on Motions. Parties will receive notice of any decision immediately upon its issuance. Parties may obtain a copy of any decision from chambers or the Clerk's office. Inquiries as to the status of submitted motions will not be entertained.

3. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery in a civil case, the parties shall submit to the Court for its approval a joint pretrial order, which shall include the following:

- i. The full caption of the action.
- ii. The names, addresses (including firm names), and telephone numbers and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.
- iv. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but

including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.

- v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.
- vi. A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).
- vii. Any stipulations or agreed statements of fact or law which have been agreed to by all parties.
- viii. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition.
- ix. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.
- x. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party shall file, 15 days before the date of commencement of trial if such a date has been fixed, or 30 days after the filing of the final pretrial order if no trial date has been fixed:

- i. In jury cases, requests to charge and proposed voir dire questions. When feasible, proposed jury charges should also be submitted on a 3.5" diskette in WordPerfect version 5.1 or higher format;
- ii. In nonjury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element;
- iii. In all cases, motions addressing any evidentiary or other issues which should be resolved in limine; and
- iv. In any case where such party believes it would be useful, a pretrial memorandum.

C. Pretrial Conferences. A pretrial conference will be scheduled in every civil case as soon as the case is filed. Notice of the pretrial conference will be by letter, but the attorneys should follow the calendar in the *New York Law Journal*. At the pretrial conference the Court will set a discovery schedule and a date for submission of a joint proposed pretrial order. Any party may request a pretrial conference by writing to chambers. A settlement conference will be arranged on the joint request of all parties.

4. Discovery

A. Interrogatories not Favored. The use of interrogatories is discouraged. When used, interrogatories must conform with Local Rule 33.3. Additionally, parties should confine their use to specific, narrow and clearly explained requests.

B. Private Resolution of Disputes Favored. The Court will not entertain any discovery motion until opposing counsel have first attempted to resolve the dispute through direct communication by telephone or by a face-to-face conference. Any discovery application or motion must be accompanied by an affidavit stating the efforts made to resolve the dispute out of court.

C. Enlargements of Time to Respond to Discovery Requests. Within the period set for discovery, the parties may agree among themselves to any reasonable schedule.

D. When Discovery Not Essential for Pretrial Order. When discovery is outstanding near the time when a joint proposed pretrial order is due, if the parties can prepare a meaningful pretrial order on the basis of the voluntary discovery, without the discovery that is outstanding, the parties should prepare the pretrial order. The party desiring to compel further discovery should submit, with the pretrial order, a motion to compel.

E. Sanctions. Whenever the Court rules on a discovery motion, it will consider awarding costs and attorney's fees if it finds that the opposition to the discovery request or the request is without merit.